

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION

MDL No. 2804

*This document relates to:*

Case No. 17-md-2804

Track One-B Cases

Judge Dan Aaron Polster

**Plaintiffs' Position Paper Regarding Revision of Track One-B Case Management Order (Doc 2940)**

Plaintiffs submit this proposed modification of the Track One-B Case Management Order. This proposal holds the current trial date of October 13, 2020 but builds in short extensions of time (approximately 5 weeks) for discovery and submission expert reports and motions. It also provides specific guidance regarding the nature and finality of document production and deposition parameters which does not appear in the CMO.

**Current 1/31/20 deadline:** Production of documents and traditional 30(b)(6) depositions on discovery related issues such as documents and data shall be substantially complete. **Move to 3/2/20** with certification of full completion as to documents.

Custodians were identified on 1/23/20 but certain defendants did not fully disclose custodians. All custodians must be agreed upon or ordered by 2/3/20.

Search terms for Defendants' responsive discovery were submitted by Plaintiffs but there has been no response from Defendants other than CVS's reliance on New York Attorney General search

terms negotiated in the NY AG case at the investigatory stage. Plaintiffs submit CVS's proposed search terms are inadequate because they are not based on any substantive knowledge of the case, whereas Plaintiffs' proposed terms are based on their review of the documents in the production and information obtained through discovery in CT1A. Moreover, consistent with Special Master Cohen's guidance on propinquity, all of Plaintiffs' proposed terms are within five words or less of each other. In contrast, the New York Attorney General Terms are within fifty or one hundred words of each other. Search terms must be agreed upon or ordered by 2/3/20.

Defendants were ordered by Special Master Cohen to immediately provide Plaintiffs with a sample run of their dispensing/transactional data using the agreed upon/ordered data fields. Defendants should produce this by 2/3/20.

**Current 3/6/20 deadline:** All 30(b)(6) and fact depositions including witnesses a party will call at trial shall be completed. **Move to 4/6/20.**

Depositions shall proceed as follows:

1. Parties shall meet and confer and exchange lists of initial fact witness depositions by 3/2/20.
2. The Pharmacy Defendants as a group shall be limited to 20 total depositions. Of those 20 depositions no more than: (a) one 30(b)(6) deposition of each plaintiff on types and locations of documents and databases which shall be non-repetitive of depositions already taken in CT 1 A; (b) one 30(b)(6) deposition of each plaintiff related to topics other than types and locations of documents and databases which shall be non-repetitive of depositions already taken in CT 1 A; (c) 8 depositions of Plaintiffs' witnesses (4 per plaintiff) which shall be non-repetitive of depositions already taken in CT 1 A; and (d) depositions of third-party witnesses non-repetitive of depositions already taken in CT 1 A.
3. Plaintiffs as a group shall be limited to 30 depositions of Defendants as a group which shall be non-repetitive of depositions already taken in CT 1 A.

4. Plaintiffs are entitled to one 30(b)(6) deposition of each Defendant on types and locations of documents and databases which shall not be counted against the number of depositions in No. 3.
5. Plaintiffs are entitled to one additional 30(b)(6) deposition of each Defendant related to topics other than types and locations of documents and databases which shall not be counted against the number of depositions in No. 3.
6. Plaintiff shall be limited to 15 depositions of third-party witnesses.
7. The parties shall identify those witnesses they may call at trial no later than 3/12/20. The testifying trial witnesses shall not be counted against number of depositions in No. 2, but witnesses who were deposed in CT 1 A shall not be re-deposed except as permitted above.
8. The production of custodial files must be substantially complete at least 14 days before the deposition of that custodian, with the production entirely complete at least 7 days before any deposition of the custodian.
9. The fact discovery cut-off date is April 6, 2020. Absent good cause shown no party shall serve any discovery where the return date for a response will be past the cut-off date for fact discovery

**Current 3/16/20 deadline:** Plaintiffs serve expert reports and for each expert provides two proposed deposition dates between 3/31 and 4/17/20. **Move to 4/20/20 with deposition dates between 5/4 and 5/22/20.**

**Current 5/1/20 deadline:** Defendants serve expert reports and for each expert provides two deposition dates between 5/12 and 5/30/20. **Move to 6/8/20 with deposition dates between 6/22 and 7/10/20.**

**Current 6/19/20 12:00 pm deadline:** Daubert and dispositive motions. **Move to 7/30/20.**

**Current 7/24/20 12:00 pm deadline:** Responses to Daubert and dispositive motions. **Move to 9/7/20.**

**Current 8/28/20 schedule:** Hearings on Daubert and dispositive motions, as otherwise set by the Court if necessary. **Move to 9/18/20.**

**Current 10/5/20 1:30 pm schedule: Final Pretrial Hearing. No change.**

**Current 10/7/20 – Friday 10/9/20 schedule: Jury Selection. No change.**

**Current 10/13/20 schedule: Trial. No change.**

Respectfully submitted,

/s/Paul J. Hanly, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2020, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

/s/Peter H. Weinberger

Peter H. Weinberger  
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